

Warm Springs Telecom



WARM SPRINGS TELECOM

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ACCEPTED/FILED

SEP - 9 2016

Federal Communications Commission
Office of the Secretary

August 29, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-B204
Washington, DC 20554M

RE: **Petition for an Order and Rule Pursuant to Section 251(h)(2) of the Telecommunications Act of 1996, declaring that the Warm Springs Telecommunications Company, dba Warm Springs Telecom, Shall be Treated as the Incumbent Local Exchange Carrier for the Reservation of the Confederated Tribes of Warm Springs in Oregon, including the Wanapine Exchange and Warm Springs Wire Center.**

Dear Ms. Dortch,

Please accept this petition of Warm Springs Telecom, a certified CLEC and ETC in Oregon, to become the ILEC of record for the two areas identified on the Warm Springs Reservation. All relevant information is discussed in the petition, including maps showing the reservation and exchange borders.

Please contact me if there are any questions regarding this filing.

Sincerely,

Marsha Spellman
Regulatory Director
Warm Springs Telecom

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

<u>In the Matter of</u>)	
Petition for Order Declaring)	WC Order No. _____
Warm Springs Telecommunications Company)	
An Incumbent Local Exchange Carrier)	
For the Warm Springs Reservation)	
In Oregon)	

PETITION OF THE WARM SPRINGS TELECOMMUNICATIONS COMPANY

Warm Springs Telecommunications Company ("Warm Springs Telecom," "WST") pursuant to Section 25 (h) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(h), and section 51.223(b) of the Commission Rules, 47 C.F.R. §51.223(b), files this Petition requesting the Commission to issue an order and rule declaring that Warm Springs Telecom shall be treated as the Incumbent Local Exchange Provider (ILEC) for the Warm Springs Wire Center and Wanapine Exchange, both located on the Reservation of the Confederated Tribes of Warm Springs in Oregon. (CTWS)

In support of this petition, WST provides the following information.

BACKGROUND INFORMATION

In 2006, a number of Tribal leaders from the Confederated Tribes of Warm Springs, in Oregon, began to discuss the growing need for telecommunications as an essential service for their community. Like many tribes throughout the country, CTWS recognized that their Reservation was underserved by the company designated to serve it as the Incumbent Local Exchange Carrier (ILEC). In the case of CTWS, the company was Qwest Communications. In addition, few competitive companies or wireless carriers were interested in serving the Reservation outside the relatively dense core "Agency" area, as the Reservation is quite rural and the people living there have generally limited disposable incomes.

These Tribal leaders understood the growing importance that telecommunications were taking in everyday life. They also knew that the longer they waited to become part of the new critical telecommunications universe, the further behind their tribal members would lag. At this time, many members did not even have basic telephone service. Internet was primarily dial-up and new social media was almost non-existent. Additionally, emergency communications over the 1,000 sq. mile Reservation was a priority, as well as opportunities that modern telecommunications can bring Tribal Members in such areas as education, healthcare and economic development.

Consultants were hired, a needs assessment and a comprehensive strategic plan followed and then a plan to improve all communications services developed. Public safety radio (police and fire responders), basic telephone, followed by internet access were identified as the top three priorities. Research for the plan indicated that only approximately 62% of residents had access to a basic wire-line telephone; about 30% had internet access (not including the few who paid for a satellite connection) and most had less than broadband speeds. In addition, while many people did have cell phones, the service on the Reservation was limited to the core agency area. For most people the cell phones were only able to be used when in the central area of the Reservation or when members were traveling off the Reservation.

A "Community Connect" grant from the Rural Utilities Service (RUS) was obtained to bring broadband to the Reservation, including for the first time, to the Tribal Administration Building. With these funds, a Community Computer Center was established and mesh network created that extended the reach to a few additional buildings, including some of the residents who lived near-by. Often tribal members or visitors could be seen sitting outside the community center after-hours, with laptops, catching the signal from this small network. While the network did not extend its reach very far, what it did do was excite the tribal members about the potential for broadband telecommunications. Soon the Tribal Council passed a resolution that encouraged further telecommunications be developed, including basic telephone and public safety radio.

At first, the Tribes tried to negotiate with Qwest to bring additional telecommunications to tribal members. There was little interest other than expensive line extension charges, way too expensive for the average tribal member. If cooperation with the ILEC was not possible, the Tribes researched how they could do this themselves. Along the way, the Tribes met with the members of the National Tribal Telecommunications Association (NTTA), the membership lobbying organization of the then eight tribal-owned telcos serving tribal lands. After a tour of many of these companies, and armed with new information from this group, CTWS decided that they could do this as well. CTWS could create its own telecom company serving their tribal lands with basic telephone service and broadband access.

Initially, the plan was to become an ILEC, like the other eight tribal telcos. Negotiate with Qwest, make a plan to buy the assets and become the local exchange company. The Tribes met with Qwest, but their asking price was too steep, and the two parties were unable to reach mutually acceptable terms. Plan two was for the Tribes to become the CLEC for the area. Oregon rules allowed CLECs who build their own network without using the underlying carrier, to receive Oregon Universal Funding on a per line basis. Knowing that there would be this State subsidy, this new plan became the way forward. In 2010, after years of planning, the fledgling Warm Springs Telecom (WST) was created as a CLEC, certified by the State of Oregon. The following year, WST received its ETC status. It was its good fortune at this time that the ARRA stimulus money became available, and as WST was a "shovel-ready" project, the company received \$5.6 million in ARRA funding to build out this new company.

Since then, WST has built a state-of-the art, carrier class telecom network with a fiber/microwave backbone and a combination of fiber to the premise for its business and agency customers, and a fixed WiMAX service for the customer premises. The service includes a free wired telephone handset and a variety of broadband speeds, all FCC compliant. The network now serves about 85% of the tribal lands. The Reservation is quite large, 1000 sq. miles, with a varied and difficult terrain including high mountains, deep canyons, high desert, rivers, and forested woodlands. There are many areas that are unpopulated, but there are also many areas that have small pockets of residents, living in these difficult to reach areas. Although WST is a CLEC, it has made a "COLR" type commitment to the Tribal Council, committing to serve everyone on the Reservation, regardless of location and without the imposition of exorbitant line-extension fees.

OREGON PUBLIC UTILITY COMMISSION ORDER 15-393

On June 24, 2015, Warm Springs Telecommunications Company, dba Warm Springs Telecom (WST), filed two requests with the Public Utility Commission of Oregon in a common application.

The first request, docketed as UA 166, sought allocation of all unallocated territory within the current Warm Springs Reservation boundaries to WST. This territory would constitute a new exchange named the "Wanapine Exchange." The second request, docketed as UM 1743, sought a certificate of authority for WST to serve the Wanapine Exchange as the incumbent local telecommunications carrier (ILEC). WST proposed to provide intra-exchange switched and dedicated services within the Wanapine Exchange, as well as inter-exchange switched and dedicated services.¹

¹ See Oregon Public Utility Commission Order 15 393, Dec 11, 2015

On December 11, 2015, the Oregon Commission ordered that:

1. The Wanapine Exchange, as defined by the map identified as Revised Exhibit C to the application of Warm Springs Telecommunications Company, dba Warm Springs Telecom is to be created.
2. The Wanapine Exchange is allocated to Warm Springs Telecommunications Company, dba Warm Springs Telecom.
3. Warm Springs Telecommunications Company, dba Walm Springs Telecom is designated as a telecommunications utility with authority to provide telecommunications services in the area of the Wanapine Exchange.
4. This Commission requests that the Federal Communications Commission treat Warm Springs Telecommunications Company, dba Warm Springs Telecom as an incumbent local exchange carrier in the area of the Wanapine Exchange.²

The Commission concluded, "We find that the proposed allocation and certifications reasonable and not contrary to the public interest."³

PRECEDENT

The Telecom Act as amended in 1996, created new, pro-competitive requirements that have enabled a new competitive telecommunications environment, one that is an established part of the telecom marketplace today. Since then, two companies that had operated in their communities as competitive local exchange companies, have submitted successful petitions to the FCC to become ILECs. In 1997, Guam Telephone Authority petitioned the FCC to become the ILEC under Section 251(h) (2) of the Act.⁴ In 2002, Mid-Rivers Telephone Cooperative, Inc. also petitioned the FCC under the same section of the Act to become the ILEC for the local area of Terry, Montana, where it had been serving customers as the CLEC. After a lengthy process, both these petitions were granted. As WST most nearly resembles Mid-Rivers, it is this petition that will be referenced below.

In 2006, the FCC ordered that Mid-Rivers Telephone Cooperative, Inc. (Mid-Rivers) should be treated as an ILEC for purposes of section 251 of the Telecommunications Act, as

² Ibid.

³ Ibid.

⁴ See In the Matter of Guam Public Utility Commission Petition for Declaratory Ruling Concerning Sections 3(37) and 251(h) of the Telecommunications Act; CCB Pol.96-18. August 13, 1996.

amended, pursuant to section 251(h)(2) of the Act.⁵ Mid-Rivers had petitioned the Commission for the same purpose as now does WST; to be considered an ILEC after previously receiving CLEC status, for an area where they have built their own facilities and now serve the great majority of the population with telephone service and broadband. Like Mid-Rivers, WST was granted ETC in 2010 (by the Oregon Public Utility Commission), and has operated as a CLEC since then. It has overbuilt the existing Qwest, now CenturyLink, facilities with its own WST network facilities. It now serves more than 90% of the customers in the Warm Springs wire center with its own carrier class network and facilities and does not use any of CenturyLink's unbundled network elements (UNEs) or resold services.⁶

Like Mid-Rivers, WST also offers advanced services, including Broadband Internet (via WiMAX) and serves the local school with fiber fed telephone service and Broadband access. WST has constructed approximately 85% of the reservation, and will be applying for additional loans to continue to build out the remaining network and upgrade the initial network with additional fiber.

One major difference between the two companies is that WST is a tribally-owned company serving its sovereign Tribal nation. WST now petitions the FCC to serve this reservation as the Incumbent with the intent of improving all services, including emergency networks, for this tribal community. The goal of WST is to expand its carrier class network to serve the community with all modern facilities, improving access to education and distance learning opportunities, healthcare and telehealth facilities, to be the lifeline for critical emergencies, and provide access for new business opportunities for this perpetually underserved and under-employed population.

In addition, as discussed above, the Oregon PUC created a new exchange that is now called Wanapine. The homes in this section were previously unserved by any ILEC, although, WST has served some of these homes as a CLEC. Also, under *Oregon Public Utility Commission Order 15 393*, WST "is designated as a telecommunications utility with authority to provide telecommunications services in the area of the Wanapine Exchange...and requests that the Federal Communications Commission treat Warm Springs Telecommunications Company, dba Warm Springs Telecom, as an incumbent local exchange carrier in the area of the Wanapine Exchange."⁷ We expand this to

⁵ See Petition for Order Declaring Mid-Rivers Telephone Cooperative, Inc. As Incumbent Local Exchange Carrier in Terry, MT, February 5, 2002. WC Docket No. 02-78.

⁶ In the Mid-Rivers petition, identified above, Mid-Rivers describes the facilities of the network as being entirely served over its own facilities, without using any of the Qwest unbundled elements or resold services. This mirrors the network that WST built to serve its customers in the Warm Springs exchange.

⁷ See Oregon Public Utility Commission Order 15 393, Dec 11, 2015

request that the FCC include the area on the reservation presently assigned to CenturyLink as the ILEC of record, to be assigned instead to WST as the ILEC for both areas that encompass the Warm Springs Reservation. (See Attachments for OPUC order)

Although there are differences in the two companies, as the situation with Mid-Rivers closely parallels the situation with WST, we pray that the Commission recognize the precedent set by their order in Mid-Rivers, and grant the same to WST under the same rules and section of the Telecom Act as indicated below.

STATUTES and RULES

The following Statutes and Rules provide the legal basis and precedence for Commission approval of this petition.

Relevant Statutory Provisions

1. Section 251 of the Telecommunications Act of 1996, is a major element of Congress' plan to promote competition in the market for local exchange telephone service.⁸ To carry out this plan, Congress distinguished incumbent LECs from other LECs in section 251(h). Section 251(h)(1) defines an incumbent LEC as a carrier that, on the date of enactment of the 1996 Act, provided local exchange service and was either a member of NECA,⁹ or became a successor or assign of a member of NECA.¹⁰ The Commission previously has described the problems associated with reading literally the "successor or assign" provision of section 251(h) (1) and opted

⁸ See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, 15506, para. 4 (1996) (*Local Competition First Report and Order*).

⁹ NECA is an association, established by Commission rule, for all "telephone companies that participate in the distribution of Carrier Common Line revenue requirement, pay long term support to association Common Line tariff participants, or receive payments from the transitional support fund administered by the association." 47 C.F.R. § 69.601(b). The association was established "in order to prepare and file access tariffs on behalf of all telephone companies that do not file separate tariffs or concur in a joint access tariff of another company for all access elements." 47 C.F.R. § 69.601(a).

¹⁰ 47 U.S.C. § 251(h)(1). Incumbent LECs are subject not only to the requirements of sections 251(a) and (b), which are applicable to all LECs, but also are subject to the more detailed obligations in section 251(c). These obligations include the duties to: negotiate interconnection agreements in good faith; provide other carriers with unbundled access to its network elements; allow other carriers to resell its exchange service at wholesale rates; and provide physical collocation of other carriers' equipment. 47 U.S.C. § 251(c).

to interpret the statute more holistically to conform to the traditional notion of “successor or assign.”¹¹ All other LECs are presumptively not incumbents, and therefore are competitors.¹²

2. A LEC may also be treated as an incumbent if the Commission determines “by rule” that it meets the requirements of section 251(h)(2).¹³ This section of the Act sets forth a three-prong test for the Commission to use to determine whether treating the LEC as an incumbent is appropriate. To be considered an incumbent, the LEC must meet all three elements of the test. The Commission may conclude, upon a clear and convincing showing, that a LEC should be treated as an incumbent if the LEC: (1) occupies a market position comparable to an incumbent; (2) has “substantially replaced” an incumbent LEC, and; (3) the reclassification serves the public interest, convenience, and necessity.¹⁴

Warm Springs Telecom believes that it meets all the rules listed supra under Sections 1 and 2 of the Telecom Act as Amended in 1996.

DISCUSSION

When the Confederated Tribes of Warm Springs began to investigate the possibility of creating its own telecommunications company to serve its members with a telephone company for the entire Reservation, not just those living in the center of the Reservation, and to bring new Broadband services to the Reservation, it had intended to become the ILEC. Although good faith efforts were made by WST to purchase the exchange from Quest, now CenturyLink, these discussions were unsuccessful. When these talks did not lead to becoming the ILEC, CTWS chose instead to become a Competitive LEC as promoted in 251 of the Telecom Act. However, the Tribes’ intent to become the Incumbent was then, and is still, very much the goal. While the initial attempt to be the “successor or assign” did not happen, WST presents this petition now arguing that it should be treated as an Incumbent “by rule” as it meets the requirements of section 251(h)(2).

¹¹ *Application of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission’s Rules*, CC Docket No. 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712, 14894-95, paras. 447-48 (1999) (declining to follow the literal approach set forth in *MCI Telecommunications Corp. v. The Southern New England Telephone Co.*, 27 F.Supp.2d 326, 336-37 (D.Conn. 1998)), *rev’d on other grounds*, *Ass’n of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

¹² *See generally, Guam Declaratory Ruling and NPRM*, 12 FCC Rcd 6925; *Guam Report and Order*, 13 FCC Rcd 13765 (determining by rulemaking the incumbent LEC status of GTA).

¹³ 47 U.S.C. § 251(h)(2). *See also* section 51.223 of the Commission’s rules, 47 C.F.R. § 51.223, which implements section 251(h)(2).

¹⁴ 47 U.S.C. § 251(h)(2). *See Local Competition First Report and Order*, 11 FCC Rcd 15499, 16110, para. 1248.

A LEC may also be treated as an incumbent if the Commission determines "by rule" that it meets the requirements of section 251(h)(2). The following three pronged test must be proved by clear and convincing evidence. WST believes it can prove that: (1) WST occupies a market position comparable to an incumbent; (2) WST has "substantially replaced" an incumbent LEC, and; (3) the reclassification of WST serves the public interest, convenience, and necessity.

WST occupies a market position comparable to an incumbent.

WST now serves 85% of the local exchange market on the Warm Springs Reservation with telephone and broadband internet services. It has built network throughout the Reservation, although it is not yet finished building out to the more far flung areas (the Reservation is 1,000 Sq. miles), it is essentially serving the whole Reservation. Warm Springs now has 978 residential lines and 761 business lines (SIP). There are approximately 880 potential homes on the Warm Springs Reservation. When WST launched its service, only 63% of the Reservation had access to the telephone network provisioned by then Qwest. Now CenturyLink, the successor company, has very few lines remaining.

WST has "substantially replaced" the incumbent LEC.

WST has "substantially replaced" CenturyLink. There are few residential customers who have CenturyLink service. The Tribal Administration has moved all its lines away from CL and is essentially using only WST to serve its business lines in an attempt to keep the Tribes' money on the Reservation. Recently, a new neighborhood with 36 new houses was constructed on the Reservation. CenturyLink declined to build any network to serve these homes with its phone and broadband service. WST presently serves those new homes with fixed wireless to all homes and is presently planning to install fiber in that part of the community. As CL did not extend its network to these homes, WST is the only phone company able to provide POTs line phone service to these residents as well as high speed broadband.

The reclassification of WST serves the public interest, convenience, and necessity.

Unlike other commercial companies that have no interest in this community, WST serves the needs of the Tribes and its members in many ways that serve the public interest. The network is seen as part of the Tribes' emergency network for residents and visitors throughout the Reservation. For instance, during the yearly wildfire season, the Bureau of Indian Affairs (BIA) and Warm Springs Fire Management set up tent camps on the Reservation housing anywhere from 100 to 1,500 firefighters that fight wildfires on the Reservation and in the Central Oregon area. With WST located on the reservation, the staff can answer the needs of this group immediately, provisioning the camps with temporary telephone and internet service for these firefighters for the duration of the fire season.

Other emergency situations have also been rectified by WST. For instance, the previous lack of a ubiquitous telephone service throughout the Reservation meant that teachers from the

Tribes' preschool could not call many parents in an emergency or call parents to come and get a sick child. Communications between the elementary school and parents were limited. Now WST provides telephone and broadband to a newly constructed K-8 school on the reservation thanks to E-rate funding, enabling the children of the Tribes to have the same advantages as children who live off the Reservation. Additionally, while the Tribes have its own Police and Fire Department with certified EMTs, a number of sudden deaths had occurred when heart attack victims did not have a telephone to call 911.

During the change from Qwest to CenturyLink, some Tribal Elders were left without phone service, much to the dismay of their worried children. Many elders did not understand that this was a change in companies and did not understand that they had to actually sign up for the new service. They thought CenturyLink was some company that just wanted to sell them some new-fangled service that they didn't want, nor could afford. When WST came to their home to sell their new service, most Elders could get Tribal Lifeline – with a new “simple to use” phone - at a rate that they could afford.

While many customers around the country have “deserted” their landline telephone companies, to use only their cellphones, this is not possible in Warm Springs as there is very limited wireless connectivity throughout this very large Reservation. The major companies only want to serve the agency area, leaving once again, no service to the many residents living outside the core area. This makes the need for wired telephone still significant and necessary. To ensure that the majority of tribal members can afford the needed services, as well as bringing Broadband to all, Tribal Lifeline services have been promoted by WST. More than half of all residential customers have qualified for Tribal Lifeline. These same people had no idea that this product was available to them from CenturyLink/Qwest. In this low income community, this service is truly a lifeline service for many.

WST has also been a keystone to creating new business opportunities. With more than 50% unemployment, (higher in the winter) the company has created good jobs and enabled new businesses. The Warm Springs UAS Test Range, certified by the FAA, part of a consortium testing UAVs for the US Navy, is the latest new venture. The Warm Springs Reservation is the only Indian Nation in the continental US to be designated as a testing site for unmanned aerial vehicles (UAV). Data transmission requirements for this business are critical, as information gathered by the UAVs is downloaded to the telco towers and transmitted to the headquarters for evaluation. Without the WST network, this would not have been possible.

As for convenience, WST has its own Customer Service offices and staff on the Reservation. Tribal residents come to the centrally located office to pay bills or sign up for services, which are staffed by tribal members, many of whom are family and long-time friends. Additionally, with the staff located on the Reservation, staff will drive to homes of customers who

do not drive, to deliver equipment, get their payments, or to offer help of any sort. Previously, the only customer service on the Reservation was via telephone, which many people did not have. The fact that the majority of the customer service staff are tribal members, also makes many customers, especially elders, much more comfortable coming to the office to purchase services or pay bills. Since many tribal members do not have the ability to access the nearest town, WST installs a free telephone to ensure that each customer actually has a phone to use. WST installers have also become another set of eyes and ears on the reservation, helping local residents when needed, reporting problems and helping in times of crisis.

CenturyLink still has facilities on the Reservation, including a Central Office (not staffed) and a fiber link traversing the Reservation along Highway 26, the main route across the Reservation. As of this writing, neither facilities have a lease, and have not had a lease for a number of years. It appears that there have been no regular updates or building of new facilities for many years. While CL still has some remaining customers, (we believe about 100 or so), they are not building out to new homes or upgrading their broadband network. We have begun to talk to CenturyLink staff about working together for a study area waiver and renegotiations of the fiber and CO lease. While there are many issues to resolve, initial conversations for both the leases and the ILEC are proceeding amicably.

NECA Pool

As required by the order, WST intends to file a petition for the study area waiver as soon as this petition to become the ILEC is granted. We will also file any additional needed documents. WST has had initial conversations with NECA staff and intends to join the NECA pool when the ILEC status and waiver are granted.¹⁵

Impact on CenturyLink

While it is difficult for an outside company to determine what the possible impacts on another company may be, WST believes that the new CAF rules have significantly changed the amount of Universal Service Funding that CL receives for Warm Springs. First, the company no longer receives a per line amount of funding for each wire center. For those companies that accepted the offer to continue to be the ILEC for their areas, including CenturyLink, they will now receive lump sum amounts. In addition, they will also have obligations to build out their networks to new FCC Broadband speeds. With so few customers left on the reservation, there is little incentive for CL to rebuild the entire serving area with upgraded facilities. It appears that there

¹⁵ 47 U.S.C. § 251(h)(2) (discussed Supra). Also see 47 C.F.R. § 69.601(a). (discussed Supra).

would be little motivation to keep an area that would bring in less and less funding with greater financial obligations and expenses.¹⁶

In addition to the federal funding, CL also receives Oregon Universal Services funding. These rules have also changed so that now, CL receives one amount for the entire state, rather than per wire center. (See Attachments). Again, by not serving the Reservation, CL would have the same amount of money without any obligations to serve or upgrade their service. This would be a savings for the company.¹⁷

¹⁶ See Connect America Fund et al., WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17729, para. 17729, para. 171 n.279 (2011) (USF/ICC Transformation Order), aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014)

¹⁷ OPUC Order 16-093, March 4, 2016 and Order 13-162, May 2, 2013: In the Matter of PUBLIC UTILITY COMMISSION OF OREGON, Investigation of the Oregon Universal Service Fund, Phases II and III. See Attachments

CONCLUSION

With this petition, we believe that Warm Springs Telecommunications Company has demonstrated that all conditions identified in Section 251 (h)(2) of the Communications Act have been met. WST respectfully requests that the Commission adopt a rule and declare that WST is now the Incumbent Local Exchange Carrier for the Warm Springs and Wanapine exchanges, on the Reservation of the Confederated Tribes of Warm Springs, in Oregon.

Respectfully Submitted:

Warm Springs Telecommunications Company

By Marsha Spellman
Date August 29, 2016

Marsha Spellman
Regulatory Director
503-997-1685

By Jose W. Matanane
Date August 29, 2016

Jose Matanane
General Manager
541.615.0555

Warm Springs Telecom
PO Box 910
Warm Springs, OR 97761

I, Jose Matanane, General Manager, Warm Springs Telecommunications Company, have read the petition of Warm Springs Telecommunications Company, and I state that the facts herein are true and correct to the best of my knowledge.

Jose W. Matanane
Jose Matanane

Dated:

August 29, 2016

ATTACHMENTS

- I. Maps**
- II. OPUC Wanapine Order 15-393**
- III. OPUC UM 1481, Orders 16-093 and 13-162**
- IV. Tribal Council Resolution #11412**

ATTACHMENT I

MAPS

As requested by the FCC, attached are two maps.

Map 1:

“Warm Springs Reservation Exchange Area Map and Surrounding Exchanges”, as presently exist. Shows Wanapine Exchange and the Qwest/CL serving area on the Reservation (Warm Springs Wire Center) as part of the larger Madras Exchange.

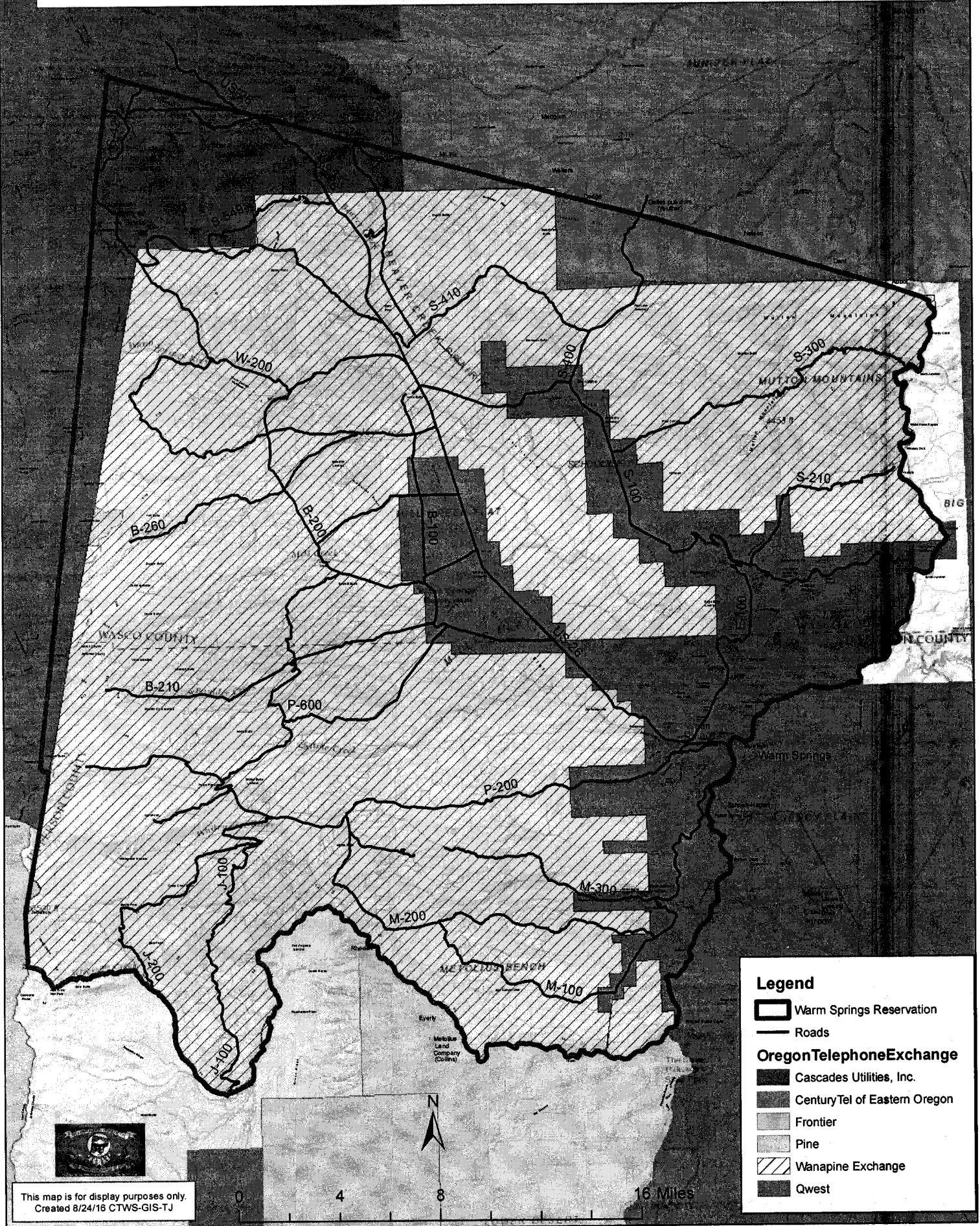
Map 2:

“Proposed Service Area for Warm Springs Telecom”, including the Wanapine Exchange and the Warm Springs Wire Center. This is the proposed ILEC service area for Warm Springs Telecom.

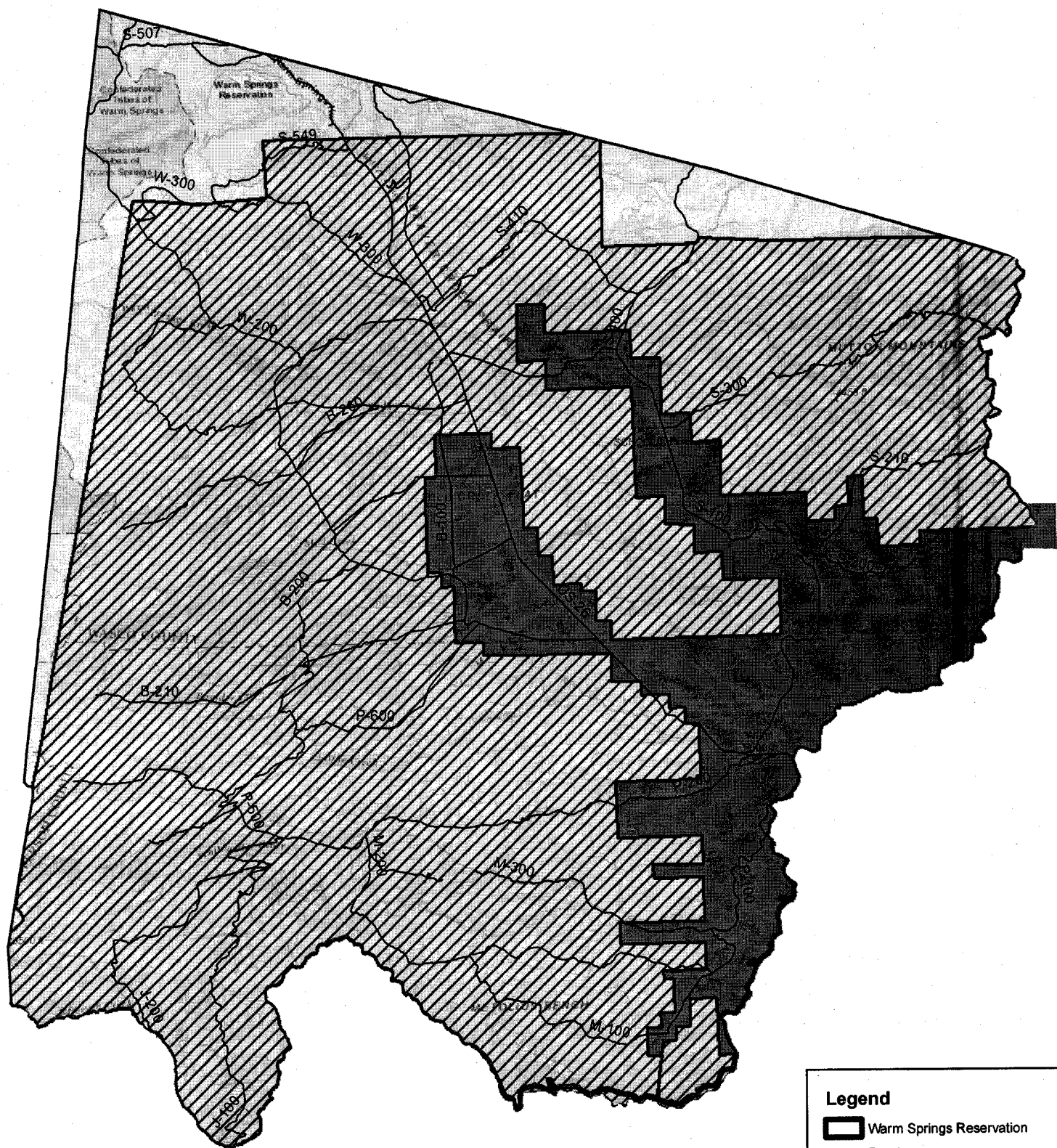
Note:

There is a little piece of land, identified on the maps, off the reservation, on the northeast side of the reservation, with a few homes that are currently being served by CL out of the Warm Springs Wire Center. We were asked by the OPUC if we would serve them, and we agreed as it is part of the Warm Springs Wire Center. If CL wants us to serve them we would do so as it would be costly for CL to serve just those few homes. If CL chooses to serve those homes, we would amend the maps to reflect that decision.

Warm Springs Reservation Exchange Area Map and Surrounding Exchanges



Proposed Service Area for Warm Springs Telecom



Warm Springs Reservation

Roads

Roads

OregonTelephoneExchange

Wanapine Exchange

Warm Springs Wire Center

This map is for display purposes only.
Created 8/24/16 CTWS-GIS-TJ

0 4 8 16 Miles

ATTACHMENT II

OPUC Wanapine Order

UA 166

UM 1743

Order 15-393

12/11/2015

ORDER NO. **15 393**

ENTERED DEC 11 2015

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UA 166, UM 1743

In the Matters of

WARM SPRINGS
TELECOMMUNICATIONS COMPANY,
dba WARM SPRINGS TELECOM

Application for Allocation of Previously
Unallocated Territory (Wanapine) (UA 166)

Application for Certification as a
Telecommunications Utility (UM 1743)

ORDER

DISPOSITION: APPLICATIONS APPROVED

I. INTRODUCTION

On June 24, 2015, Warm Springs Telecommunications Company, dba Warm Springs Telecom (WST) filed two requests with the Public Utility Commission of Oregon in a common application.¹

The first request, docketed as UA 166, seeks allocation of all unallocated territory within the current Warm Springs Reservation boundaries to WST. This territory will constitute a new exchange named the "Wanapine Exchange." The second request, docketed as UM 1743, seeks a certificate of authority for WST to serve the Wanapine Exchange as the incumbent local telecommunications carrier (ILEC). WST proposes to provide intraexchange switched and dedicated services within the Wanapine Exchange, as well as interexchange switched and dedicated services. WST expects to use its own facilities and switching equipment to provide these services. We served notice of the application consistent with statutory requirements. No objections were received.

Commission Staff concludes that this application is a reasonable and necessary first step toward obtaining federal financing to provide service to unserved residents on the Warm Springs Reservation. Staff recommends approval of both requests, conditioned upon WST meeting all legal and regulatory obligations of a certificated telecommunications utility.

¹ WST first filed on June 24, 2015, and subsequently filed an amendment to correct the company's name on September 25, 2015. WST filed revised maps on December 8, 2015 to more accurately indicate the territory for which WST has requested allocation.

II. BACKGROUND

This application addresses the service and allocation of territory in the Warm Springs Reservation, which is located in central Oregon. The southeast section of the reservation is allocated to Qwest Corporation, dba CenturyLink as the authorized ILEC. WST, owned by the Confederated Tribes of Warm Springs, currently serves residents in the Century Link-allocated area as a competitive local exchange carrier (CLEC).² A small portion along the northwest boundary is allocated to other telecommunications utilities.

The central portion, a large geographic area with a small number of residences, has not yet been allocated to any telecommunications utility. WST identified 29 residences in this area. WST states that, although it provides competitive telecommunications services to seven of these homes, at this time, no utility or competitive provider serves the remaining 22 homes in the unallocated area.

Through its application, WST seeks to provide services as an ILEC in the unallocated portion of the reservation (the proposed Wanapine Exchange). WST would provide intraexchange switched and dedicated services, as well as interexchange switched and dedicated services, using its own facilities and switching equipment. WST is not requesting to serve customers presently served by any assigned telecommunications utility.

WST seeks this allocation and utility certification in order to position itself to request federal funding to expand its network throughout the reservation. In addition to immediately reaching currently-unserved customers, WST seeks to eventually provide telecommunications services to all residents and businesses on the reservation. WST explains that, as a rural telecommunications utility, it would gain access to federal financing, such as loans from USDA's Rural Utilities Service. WST's long-term goal is to provide affordable telecommunications services to all reservation residents and businesses.

III. DISCUSSION

A. Allocation of Territory

ORS 759.535 sets forth the procedures for applying for allocation of unserved territory. OAR 860-034-0470 further defines the information to be included in the application of a small telecommunications utility. Consistent with these provisions, WST attached sufficient maps as revised Exhibits A, B, and C to its application showing the requested allocation and demonstrating that the area is not served by another person providing similar local exchange telecommunications service.³

² See Order No. 10-137 (docket CP 1470) authorizing WST to operate as a CLEC in Oregon.

³ To the extent necessary, we waive the requirement in OAR 860-034-0470(2) to show the location of facilities in the vicinity of the boundaries of the territory applied for. The application does include a map that indicates that most of the existing buildings in the proposed new exchange are located reasonably close to the area in which WST currently provides services as a CLEC.

ORS 759.535 places procedural notice obligations on the Commission. We met these requirements through publication of notice of WST's application in the Madras Pioneer newspaper and service on our telecommunications list.

Consistent with ORS 759.506(1), the Commission's purpose in allocating territory is to ensure that utilities provide safe and adequate local exchange services and that all customers are served in an adequate and nondiscriminatory manner. WST demonstrated that allocating to it the remaining territory within the Warm Springs Reservation will further this objective by allowing it to reach unserved customers and access federal funds to further build out its network on the reservation.

B. Certificate of Authority

ORS 759.020 requires a certificate of authority from the Commission before providing intrastate telecommunications services. Applicants may apply for status as a telecommunications utility or, if the applicant's services are subject to competition or its customers have reasonable alternatives, as a competitive telecommunications services provider. OAR 860-032-0005 defines the requirements for an application. WST submitted a complete application form as part of its filing.

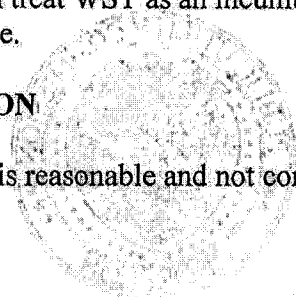
OAR 759.020(2) requires the Commission to provide notice of the filing. We satisfied this requirement by serving notice on a service list consisting of all new applications and competitive providers.

WST's application should be granted. Granting a request for certification is conditioned upon the applicant meeting all Commission rules and state law. Among other requirements, WST will need to file tariffs prior to commencing service in the proposed exchange.

The new ILEC entity will also need to comply with federal requirements, as outlined in Staff's correspondence in this docket. With reference to 47 C.F.R. § 51.223(b), we request that the Federal Communications Commission treat WST as an incumbent local exchange carrier in the area of the Wanapine Exchange.

IV. CONCLUSION

We find that the proposed allocation and certification is reasonable and not contrary to the public interest.



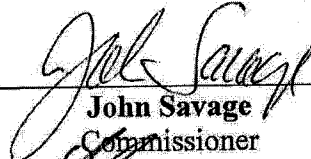
V. ORDER

IT IS ORDERED THAT:

1. The applications of Warm Springs Telecommunications Company, dba Warm Springs Telecom are granted with the conditions described in this order.
2. The revised maps filed by Warm Springs Telecommunications Company, dba Warm Springs Telecom seeking the allocation of a certain local exchange telecommunications service territory, are approved.
3. The Wanapine Exchange, as defined by the map identified as Revised Exhibit C to the application of Warm Springs Telecommunications Company, dba Warm Springs Telecom is created. The map is attached as Appendix A to this order.
4. The Wanapine Exchange is allocated to Warm Springs Telecommunications Company, dba Warm Springs Telecom.
5. Warm Springs Telecommunications Company, dba Warm Springs Telecom is designated as a telecommunications utility with authority to provide telecommunications services in the area of the Wanapine Exchange.
6. This Commission requests that the Federal Communications Commission treat Warm Springs Telecommunications Company, dba Warm Springs Telecom as an incumbent local exchange carrier in the area of the Wanapine Exchange.

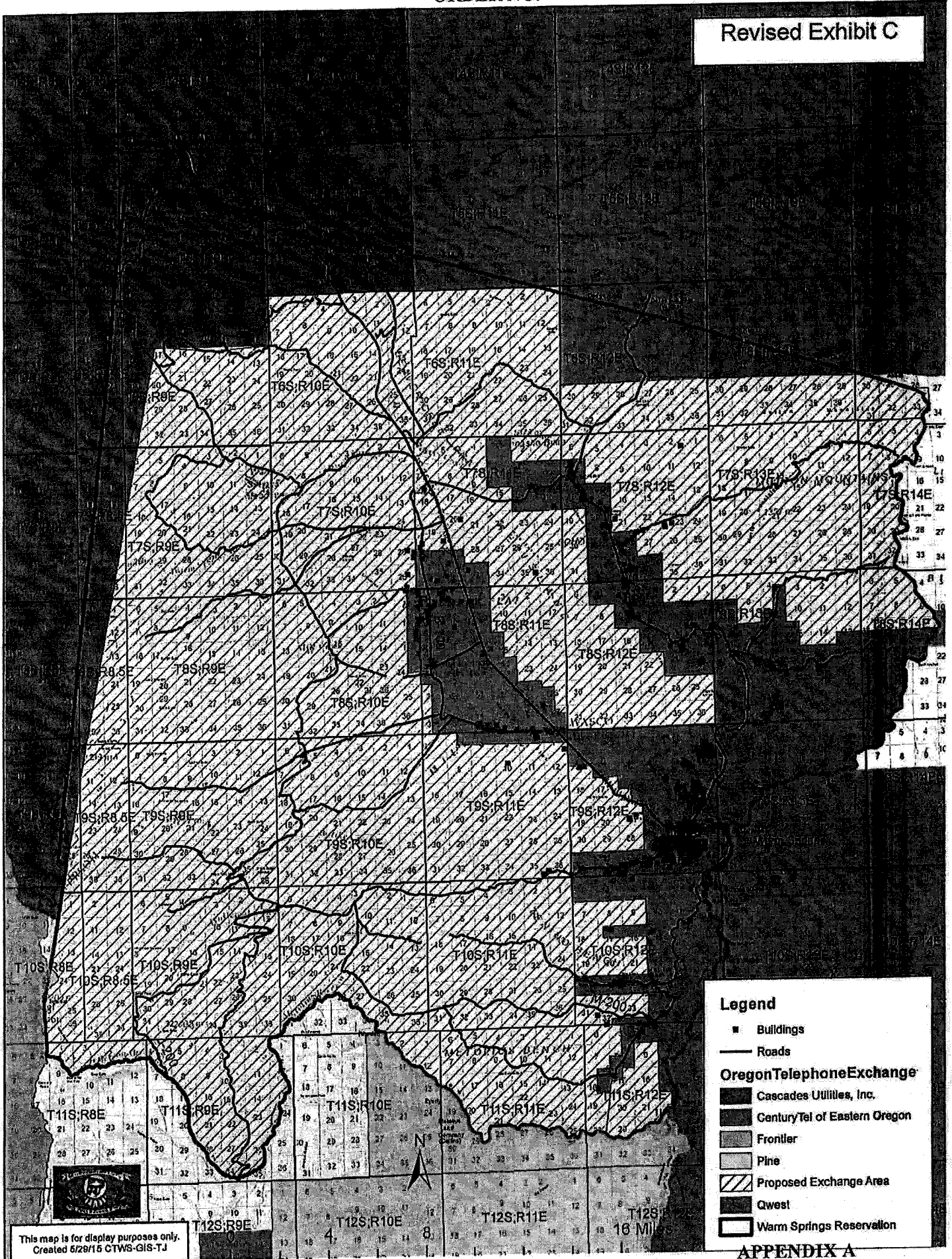
DEC 11 2015

Made, entered, and effective _____.

Susan K. Ackerman
ChairJohn Savage
CommissionerStephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

Revised Exhibit C



This map is for display purposes only.
Created 6/29/15 CTWS-GIS-TJ

ATTACHMENT III

OPUC - UM 1481 Orders 16-093 and 13-162

ORDER NO. 13 162
ENTERED: MAY 02 2013

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM-1481
Phase II

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Staff Investigation of the Oregon Universal
Service Fund.

ORDER

DISPOSITION: STIPULATION ADOPTED; REDUCTIONS IN
OREGON UNIVERSAL SERVICE FUND
DISTRIBUTIONS ORDERED; PHASE III
PROCEEDING OPENED

In this order, we adopt a stipulation of the parties reducing the funds annually collected from customers and distributed to telecommunications carriers by the Oregon Universal Service Fund (OUSF) by \$18.5 million over a three year period. We also open a third phase of this proceeding to address key aspects of the OUSF.

I. INTRODUCTION

ORS 759.425 directs this Commission to establish and implement a competitively neutral and nondiscriminatory universal service fund (OUSF) conforming with the federal Telecommunications Act of 1996 (the Act), to ensure that basic telephone service is available at a reasonable and affordable rate. The statute also states that "the commission may delay implementation for rural telecommunications carriers, as defined in the Act, for up to six months after the date the Federal Communications Commission (FCC) adopts a cost methodology for rural carriers." In docket UM 731, we created and implemented the OUSF. After a four-phase, multi-year investigation, we approved the final plan for the OUSF, applying only to non-rural carriers, and initiated the fund's operations.¹

Although the FCC did not subsequently adopt a rural carrier cost methodology, in 2003, we added rural carriers into the OUSF regime and directed that a triennial review of the cost of the companies vying for the rural portion of the OUSF be undertaken.² In the succeeding years, the size of the OUSF, calculated according to the method required by ORS 759.425(3)(a), increased dramatically, as did the concomitant need to increase the

¹ See Docket No. UM 731, Order No. 00-312 (Jun 16, 2000).

² See Docket No. UM 1017, Order No. 03-082 (Feb 3, 2003).

customer surcharge on telecommunications services to fund the OUSF. By 2012, the fund was distributing over \$36.4 million, with further increases expected in 2013 and 2014. The OUSF surcharge, now 8.5 percent, is among the highest in the nation.

II. PROCEDURAL HISTORY

On April 26, 2010, we opened this docket to investigate the OUSF as permitted under ORS 759.425(2)(a) and (3)(b). After several workshops and prehearing conferences, parties submitted two rounds of comments addressing the current status of the fund and recommendations for the fund's revision.

In Order No. 10-496, entered December 28, 2010, we deferred final action on any revision to the OUSF until after the 2011 legislative session, but adopted several procedures to respond to party concerns about perceived accountability with regard to the current fund. Among those procedures was the requirement that "the non-rural companies must, beginning March 1, 2011, submit semiannual reports to show that the funds were used in areas with demonstrably higher installation and maintenance costs * * * as compared to the remaining wire centers * * *."³ We also delayed the consideration of certain substantive issues raised by the parties in these proceedings.⁴

On May 22, 2012, with a triennial review of the rural carriers' OUSF funding coming due, the Oregon Telecommunications Association, the Oregon Exchange Carriers Association, and the Commission Staff filed a joint motion in docket UM 1017 asking for the adoption of a memorandum of understanding which would provide for a single further increase to a revenue cap of \$15,650,933. Verizon opposed the motion. By Order No. 12-204, entered June 5, 2012, we adopted the memorandum of understanding, except with respect to a section which would allow for increases in funding of rural carriers beyond the revenue cap under a number of scenarios. We also ordered the second phase proceeding in this docket to address the issues previously held in abeyance.

Pursuant to an agreed-upon schedule in this docket, the parties⁵ submitted a Joint Issues List on August 21, 2012. The proposed list of issues was "broad enough to cover all of the issues each party would like to address," but the parties sought guidance from the Commission on whether or not we wanted them to address all of the listed issues. By an Administrative Law Judge ruling August 29, 2012, the following issues were included:

³ Order No. 10-496 at 3.

⁴ See *Id.* at 2, for a list of the general groupings of issues raised by the parties. Several parties seeking to resolve some of the issues indicated that statutory changes would be necessary prerequisites.

⁵ Citizens' Utility Board of Oregon; the Oregon Telecommunications Association; GVNW Consulting, Inc., Frontier; CenturyLink; Verizon and their numerous affiliated companies listed in the Joint Motion to Adopt Stipulation and Explanatory Brief at 2, fn. 1-3, Warm Springs Telecommunications Company, Oregon Cable Telecommunications Association, and Oregon Telecommunications Ratepayers Association for Cost-based and Equitable Rates. The Staff of the Public Utility Commission of Oregon was also a signatory to the Motion, Agreement, Stipulation and Explanatory Brief.

What changes should be made to the existing OUSF related to the calculation, the collection, and the distribution of funds?

What changes should be made to the existing OUSF related to how funds are used?

What changes should be made to the existing OUSF related to transparency and accountability?

On April 16, 2013, the parties filed a Joint Motion to Adopt Stipulation and Explanatory Brief, with the stipulation.

III. AGREEMENT AND STIPULATION

The stipulation proposes to resolve all of the issues designated in Phase II of this docket. The parties ask that we approve changes to the OUSF and take future actions over a 3-year period, as described in the stipulation's substantive paragraphs, numbered and organized as follows:

1. OUSF Support to Decrease Over Staggered 3-Year Terms.

The 3-year period for Non-Rural Companies⁶ begins on January 1, 2014. Non-Rural Companies will see stepped decreases in OUSF support occurring on January 1, 2014, January 1, 2015, and January 1, 2016.

The 3-year period for Rural Companies⁷ begins on July 1, 2013. Rural Companies will see a single-funding step decrease taking effect on July 1, 2015 and ending June 30, 2016, subject to the normal two-month OUSF lag.

2. OUSF Funding Not Affected by Line Counts.

Non-Rural Companies' support will be fixed according to the schedule in paragraph 3, below, and will drop to a combined level of \$17.5 million by 2016.

⁶ Qwest (CenturyLink) and Frontier.

⁷ Asotin Telephone Company d/b/a TDS Telecom; Beaver Creek Cooperative Telephone Company; Canby Telephone Association d/b/a Canby Telecom; Cascade Utilities, Inc., d/b/a Reliance Connects; CenturyTel of Oregon, Inc., d/b/a Century Link; CenturyTel of Eastern Oregon, Inc., d/b/a CenturyLink; Clear Creek Mutual Telephone Company; Colton Telephone Company, d/b/a Colton Tel. Eagle Telephone System; Gervais Telephone Company; Helix Telephone Company; Horne Telephone Company d/b/a TDS Telecom; Molalla Telephone Company d/b/a Molalla Communications Company; Monitor Cooperative Telephone Company; Monroe Telephone Company; Mt. Angel Telephone Company; Nehalem Telecommunications, Inc., d/b/a RTI Nehalem Telecom/ North-State Telephone Co.; Oregon-Idaho Utilities Inc. ; Oregon Telephone Corporation; People's Telephone Co.; Pine Telephone System, Inc.; Pioneer Telephone Cooperative; Roome Telecommunications Inc.; St. Paul Cooperative Telephone Association; Scio Mutual Telephone Association, Stayton Cooperative Telephone Company, TransCascades Telephone Company, d/b/a Reliance Connects; and United Telephone Company of the Northwest, d/b/a Century Link .

Rural Companies will have a single *pro-rata* reduction of \$1 million on July 1, 2015 and will also not be affected by line counts as currently agreed to in the Memorandum of Understanding approved in docket UM 1017.⁸

3. Non-Rural Companies' Support to Decline on a Specific Phase-Down Schedule

	2014 Support	2015 Support	2016 Support
Frontier Northwest	\$9.8 Million	\$8.4 Million	\$7.0 Million
Qwest Corp (CenturyLink)	\$13.2 Million	\$11.8 Million	\$10.5 Million
Total	\$23 Million	\$20.2 Million	\$17.5 Million

4. Phase III Proceeding.

The parties recommend that a Phase III proceeding be opened to address the designated issues in a specifically targeted way beginning after September 30, 2013 and concluding before July 16, 2016.

- (a) Accountability for Non-Rural Companies. Identify methods for accurately estimating how OUSF funds are directed to operating expenses in claimed high-cost areas.
- (b) Consideration of a methodology to allocate Incumbent Local Exchange Carriers (ILEC) network costs between basic telephone and other services, including a review of the cost models used to calculate OUSF support. Apply the methodology to the support calculation for all companies receiving OUSF support.
- (c) Consideration of a methodology, applicable to all current OUSF recipients, for identifying areas of unsubsidized competition and determine if OUSF support should continue to be provided there.

5. Reallocation of OUSF Funds among Rural Company Recipients.

- (a) Reallocations will be decided by January 1, 2014 with a July 1, 2014 implementation date, subject to normal two-month OUSF lag period.
- (b) Rate of reductions in OUSF funding per company is capped at 5 percent per year, to take place after the \$1 million reduction on July 1, 2015. Other than the \$1 million *pro rata* reduction among Rural Companies, if OUSF support is re-allocated so that one or more Rural Companies' support is reduced, the support amounts resulting from reductions shall be re-allocated among the other Rural Companies.

6. Implementation Dates for Commission Changes to Funding.

If the Commission's review of cost allocation methodologies and unsubsidized competition, under paragraph 4 above, results in changes, those

⁸ See Order No. 12-204 (Jun 5, 2012) and Errata Order No. 12-309 (Aug 14, 2012).

changes will not be implemented before July 2016 for Rural Companies or before July 2017 for Non-Rural Companies.

7. CLEC ETCs to Receive Identical Compensation; Warm Springs Support Capped.

Between January 1, 2014 and December 31, 2016, any Competitive Local Exchange Carrier (CLEC) designated an Eligible Telecommunications Carrier (ETC) for purposes of OUSF funding will receive the ILEC per-line amount in its service area. Warm Springs Telecommunications Company will not be able to receive in excess of \$1.5 million in OUSF annual support.

III. DISCUSSION

A. Position of the Parties.

In their supporting brief, the parties assert that the stipulation results in a full and complete resolution of the issues included in the ALJ's Phase II ruling of August 29, 2012. They further state that the stipulation is in the public interest and meets the statutory requirements of ORS 759.425(1). The parties argue the proposed stipulation, if approved, would fulfill the Commission's mandate to ensure basic telephone service is available at a reasonable and affordable rate.

The parties state that adopting the terms of the stipulation will result in material reductions to the overall size of the OUSF from a phase-down in Non-Rural Company support and a one-time \$1 million reduction in Rural Company support, along with the Commission's ability to reallocate funds among the Rural Companies within a 5 percent OUSF reduction limit at specified times.

The parties state that adopting the stipulation will provide carriers with clarity and certainty with respect to OUSF funding for the next three years. At the same time, the Commission will continue to have the flexibility it needs in this ongoing proceeding to address funding-related issues raised by the parties. The parties assert that the proposed three-pronged approach for Phase III will enable the Commission to develop a record that will both ensure the availability of universal service in Oregon, consistent with ORS 759.425, and fully consider the rights of the parties when implementing changes to the OUSF.

B. Findings of Fact and Conclusions of Law.

Phase II of this proceeding was opened to address the three questions noted above. The parties now propose to address these issues in a Phase III proceeding. In essence, the parties have reached an agreement with respect to near-term changes that will mitigate the existing problem by reducing the current size of the fund rather than agreeing on the means to achieve an over-arching solution.

We find that adopting paragraphs 1-3 of the stipulation will, over the next three years, directly reduce the amounts distributed to carriers by the OUSF. We also find that the

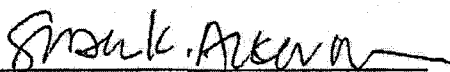
terms in stipulation paragraphs 4-7 will fairly balance the competing interest of the parties, will provide the Commission with the flexibility to address open issues in the next phase of this proceeding without undue delay and will not adversely affect the adoption of paragraphs 1-3. We therefore conclude that the terms of the stipulation will result in just and reasonable rates and adopting the stipulation is in the public interest.

IV. ORDER

IT IS ORDERED that:

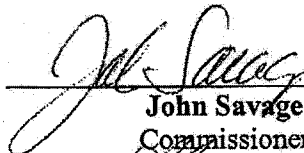
1. The Stipulation among Citizens' Utility Board of Oregon; Comcast Phone of Oregon, LLC; CenturyLink; Frontier; GVNW Consulting, Inc.; Oregon Cable Telecommunications Association; the Oregon Telecommunications Association; Telecommunications Ratepayers Association for Cost-based and Equitable Rates; Verizon; Warm Springs Telecommunications Company; and the Staff of the Public Utility Commission of Oregon attached hereto as Appendix , is adopted;
2. A third phase of this proceeding shall be opened to address the issues as set forth in paragraph 4 of the stipulation; and
3. The Staff of the Public Utility Commission of Oregon and the Administrator of the Oregon Universal Service Fund shall take such steps as necessary to effectuate changes to the collection and distribution of funds between January 1, 2014 and June 30, 2016, as set forth in the stipulation.

Made, entered, and effective MAY 02 2013



Susan K. Arkerman





John Savage
Commissioner



Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ORDER NO. **16 093**

ENTERED: **MAR 04 2016**

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1481
Phase III

In the Matter of

PUBLIC UTILITY COMMISSION OF
OREGON

Investigation of the Oregon Universal
Service Fund.

ORDER

DISPOSITION: STIPULATIONS ADOPTED

In this order, we adopt two stipulations filed by the parties in this case. Adopting the terms of the stipulations will reduce the size of the Oregon Universal Service Fund (OUSF), provide clarity for the next several years, and strengthen reporting and information requirements for non-rural carriers. We intend to revisit the core questions regarding the OUSF that gave rise to this Phase III when more information is available.

I. PROCEDURAL HISTORY

This Phase III was initiated by Order No. 13-162 to address the following three issues:

- (a) Accountability for non-rural companies. Identify methods for accurately estimating how OUSF funds are directed to operating expenses in claimed high-cost areas.
- (b) Consideration of a methodology to allocate Incumbent Local Exchange Carriers (ILEC) network costs between basic telephone and other services.
- (c) Consideration of a methodology, applicable to all current OUSF recipients, for identifying areas of unsubsidized competition and whether OUSF support should continue to be provided there.

The parties to this case have twice attempted to resolve these issues through stipulation. In Order No. 15-005, we declined to adopt the first proposed settlement based on our decision on the need for more review of the issues relating to the need for and administration of the OUSF. Following a Commission workshop, the parties then refiled the stipulation with a revised explanatory brief. In Order No. 15-365, we again declined to adopt the stipulation. We encouraged the parties to develop a new proposed resolution and instructed any proposal should continue further reductions to the overall size of the OUSF and be consistent with the parameters outlined in Order No. 15-365.

In response to our directive, the parties have now submitted two new stipulations for our consideration. On January 29, 2016, Qwest Corporation, dba CenturyLink QC and Frontier Communications Northwest Inc. filed a "Phase IIIa Stipulation" proposing to resolve issue (a) above. On the same day, CenturyLink,¹ Frontier,² the Oregon Cable Telecommunications Association (OCTA),³ the Oregon Telecommunications Association (OTA), Verizon,⁴ and Warm Springs Telecommunications Company filed a "Revised Phase III Stipulation" proposing to resolve issues (b) and (c) (Revised Stipulation). The stipulations are attached to this order as appendices.

II. STIPULATIONS

The "Phase IIIa Stipulation" modifies the reporting and filing requirements for CenturyLink and Frontier Northwest for their expenses in areas that are eligible for OUSF support. The purpose is to address accountability concerns raised by Staff and the Commission.

The "Revised Phase III Stipulation" adopts an eight and one-half percent cap on the contribution surcharge for the five-year term of the stipulation. It does not extend the plan detailed in the Revised Stipulation beyond 2021. The stipulated phase-down of the OUSF receipts will result in a 27.5 percent reduction in OUSF support for non-rural companies and a 15.2 percent reduction for rural companies according to a capped disbursement schedule. Attachments to the stipulation outline the methodology for the pro rata support reduction process and rural ILEC support reallocation process. In their explanatory brief, the parties conclude that these reductions accomplish the goal of issues (b) and (c) by controlling the size of the OUSF.

The Revised Stipulation also recommends the Commission initiate a new proceeding in 2019 to review the OUSF and issue a final order prior to the end of the term of the Revised Stipulation.

The parties urge that by approving the Revised Stipulation, the Commission will continue to provide support for universal service, provide carriers with clarity and certainty about funding levels for a five-year period, and stabilize the financial burden on Oregon consumers that contribute to the program.

¹ The CenturyLink companies that are parties to this docket are Qwest Corporation d/b/a CenturyLink QC; United Telephone Company of the Northwest, d/b/a CenturyLink; CenturyTel of Oregon, Inc.; and CenturyTel of Eastern Oregon, Inc.

² Frontier Communications Northwest Inc. and Citizen's Telecommunications Company of Oregon.

³ OCTA signed the stipulation on behalf of its members other than Charter and BendBroadband.

⁴ The Verizon affiliates that are parties to this proceeding are MCI metro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services; MCI Communication Services, Inc., d/b/a Verizon Business Services LLC; TTI National, Inc.; Verizon Long Distance LLC; and Verizon Select Services, Inc.

III. RESOLUTION

The Phase IIIa Stipulation and the Revised Stipulation generally address our immediate concerns. We acknowledge it is important for the public and the ILECs to have reasonable certainty as to the contributions that will be required to meet the goals of the OUSF. Consequently, we approve the stipulations, recognizing there is a need for certitude and these stipulations satisfy that need on an ongoing, temporary basis and will allow the companies and the public to plan appropriately. Most importantly, the parties have responded to our concern about maintaining the existing surcharge rate. While some of the core questions giving rise to this docket and raised in our prior orders are not fully resolved, we will address those issues in this proceeding at a future date.

We find that adopting the stipulations will directly reduce the amounts distributed to carriers by the OUSF, while maintaining customer surcharges at current levels. We also find that the terms in the stipulations will provide the Commission with the flexibility to address previously-raised issues in the near future.

We therefore conclude that the terms of the stipulations will result in just and reasonable rates and adopting the stipulations is in the public interest.

IV. ORDER

IT IS ORDERED that:

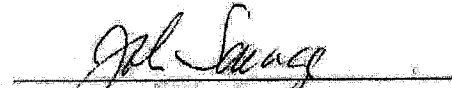
1. The Revised Phase III Stipulation between CenturyLink QC, et al; Frontier Communications Northwest, Inc., and the Citizens Telecommunications Company of Oregon; the Oregon Cable Telecommunications Association; the Oregon Telecommunications Association⁵; Verizon, et al; and Warm Springs Telecommunications Company, filed on January 29, 2016, attached hereto as Appendix A, is adopted.
2. The Phase IIIa Stipulation between Qwest Corporation, dba CenturyLink QC and Frontier Communications Northwest Inc., filed on January 29, 2016, attached hereto as Appendix B, is adopted.

⁵ On behalf of its member companies other than Charter and BendBroadband.


3. The Staff of the Public Utility Commission of Oregon and the Administrator of the Oregon Universal Service Fund shall take such steps as necessary to effectuate changes to the collection and distribution of funds between January 1, 2017 and December 31, 2021, as set forth in the Revised Phase III Stipulation.

Made, entered, and effective MAR 04 2016.


Susan K. Ackerman
Chair


John Savage
Commissioner




Stephen M. Bloom
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.

ATTACHMENT IV

Tribal Council Resolution #11412

5/10/11

RESOLUTION NO. 11.412

WHEREAS, The Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe") is a federally recognized Indian Tribe; and,

WHEREAS, By Resolution No. 11.181, Tribal Council formed the Warm Springs Telecommunications Company ("WSTC"), as a subordinate organization pursuant to Article V, Section 1 (o) of the Tribal Constitution and By-Laws, for the purpose of providing expanded and improved telecommunication services on the Warm Springs Reservation to tribal members, Tribal and private businesses, critical facilities, Tribal and other governments; and,

WHEREAS, By Resolution No. 11.181 Tribal Council recognized that it is in the best interest of the Tribes "to provide an effective mechanism to operate and manage telecommunications on the reservation" through WSTC; and,

WHEREAS, The Articles of Incorporation of WSTC state that the purpose of the corporation is to enter the telecommunications business and become the general telephone provider on the Warm Springs Reservation in order to, among other things:

- Construct, operate and maintain telecommunications as a secure, profitable business of the Tribes as it related to all forms of telecommunications services, including the receipt and transmission of telephone signals over wire line, microwave, and cellular radio systems; the provision of cable television services and electronic data of all types and kinds;
- To develop, improve and manage the telecommunications infrastructure on the reservation and the lands of the Tribes;
- Enable the Tribes to develop its resources for the benefit of Tribal members; and
- To assist the Tribes in developing its Reservation into an economically viable homeland for present and future generations of our people; and

WHEREAS, WSTC will provide the Reservation with new, state of the art, telecommunications that will support new economic development opportunities, educational benefits and improved health care for tribal members that would not be achieved without creation of the WSTC; and,

WHEREAS, The success of WSTC, its ability to improve telecommunications infrastructure on the Reservation and to achieve the purposes and benefits identified in the WSTC Articles of Incorporation relies on the support of the Tribe, acting through its tribal administration and various departments, enterprises, subordinate bodies and tribal members; and,

WHEREAS, In August and September, 2010, the Tribe and WSTC were awarded a Broadband grant and loan funding under the American Recovery and Reinvestment Act in the amount of \$5,445,920 ("ARRA Funding") and a technical assistance grant of \$200,000 through the U.S. Department of Agriculture Rural Utility Service ("RUS Grant"); and,

WHEREAS, The ability for WSTC to repay the ARRA Funding loan and to meet the ARRA Funding and RUS Grant requirements is threatened when WSTC is not considered or consulted regarding the provision of telecommunications services to and for the Tribe and this undermines the ability of WSTC to provide benefits and services to the Tribe and the tribal membership; and,

ORIGINAL

WHEREAS, In order to best support the growth of WSTC and ensure its success for the benefit of the Tribe and tribal members, all tribal offices, departments, agencies, Enterprises, employees and agents of the Tribe must consider WSTC as a possible provider of telecommunications services to the extent that WSTC provides the required services; and

WHEREAS, In the event the WSTC cannot provide required services or the service does not meet the requirements of the Tribe, then tribal offices, departments, agencies, Enterprises, employees and agents of the Tribe must enlist the consulting services of the WSTC in making telecommunications decisions in order to ensure that any product or service selected is compatible with the technology utilized by the WSTC; now therefore,

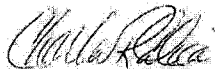
BE IT RESOLVED, By the (25th) Tribal Council of the Confederated Tribes of Warm Springs Reservation of Oregon, pursuant to Article V, Section 1(f), (1) and (o), that all tribal offices, departments, agencies, Enterprises, employees and agents of the Tribe are directed to give preference to WSTC in the award of telecommunications contracts for services to and on the Warm Springs Reservation pursuant to tribal guidelines for Indian Preference of Indian-owned economic enterprises; and

BE IT FURTHER RESOLVED, That all tribal offices, departments, agencies, Enterprises, employees and agents of the Tribe are directed to consult WSTC regarding any telecommunications service or product to be purchased by a tribal entity and to, in any such purchase, maintain compatibility with WSTC to the extent feasible; and

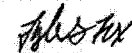
BE IT FURTHER RESOLVED, That a written directive shall be issued to all offices, departments, agencies, Enterprises, employees and agents of the Tribe notifying them of the purposes and requirements of this resolution.

CERTIFICATION

The undersigned, as Secretary-Treasurer/CEO of the Confederated Tribes of the Warm Springs Reservation of Oregon, hereby certifies that the Tribal Council is composed of 11 members of whom 6 constituting a quorum, were present at the meeting thereof, duly and regularly called, noticed, convened and held this 22nd day of March, 2011; and that the foregoing resolution was passed by the affirmative vote of 5 members, the Chairman not voting, and that said resolution has not been rescinded or amended in any way.


Charles R. Calica
Secretary-Treasurer/CEO

NOTED: MAR 25 2011

ACTING 
Paul W. Young
Superintendent

cc: Secretary-Treasurer/CEO

Superintendent

Administrative Services Center